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**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:**

B-219642

**DATE:** August 22, 1985**MATTER OF:**

REACT Corporation

**DIGEST:**

Where protester waits 3 months after filing a protest with the contracting agency before it files a protest with GAO--even though the agency never replied to its protest, and the protester was aware that award had been made--the protester did not diligently pursue the matter, and its protest with GAO consequently is dismissed as untimely.

REACT Corporation (REACT) protests the Department of the Navy's purchase of certain computer equipment under Burroughs Corporation's (Burroughs) nonmandatory automated data processing (ADP) schedule contract. REACT complains that by not accepting its offer of refurbished Burroughs equipment, the Navy unduly restricted competition and made the procurement a sole-source award to Burroughs. REACT asserts that its refurbished Burroughs equipment is under a same-as-new warranty and, therefore, is as good as new equipment. We dismiss the protest.

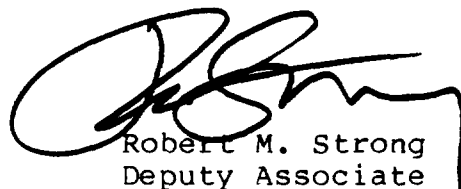
The notice of the Navy's intent to purchase the Burroughs equipment appeared in the January 11, 1985, edition of the Commerce Business Daily (CBD). Firms not on the ADP schedule were given the opportunity to respond by submitting clear and convincing documentation that it would be more advantageous to the government to consider their equipment than to place an order against Burroughs' current schedule contract. On January 15, REACT submitted an offer of refurbished Burroughs equipment, stating that such equipment had been and would continue to be properly maintained. REACT also assured the Navy that it would obtain certification of the maintainability of its refurbished Burroughs equipment prior to delivery of the equipment. After several calls to the contracting office concerning its offer, REACT finally was informed during an April 23 telephone conversation that, on April 8, Burroughs had been awarded a contract for this requirement as well as for another requirement that appeared in the February 22 edition of the CBD.

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By letter dated April 23, REACT protested to the Navy that it had not been advised that the two computer equipment requirements were being combined for award purposes and that the company had not been allowed to submit an offer on both. REACT also alleged that its price for the requirement in the January 11 CBD was lower than Burroughs' contract price. After receiving no response to its protest, REACT sent a letter to the Navy on July 11 asking for a reply and sent another letter to the agency on July 30 requesting information under the Freedom of Information Act (FOIA) regarding the two awards to Burroughs. On July 31, REACT filed a protest on the matter with our Office.

When a protest initially has been filed with the contracting agency, the protester is not permitted to delay filing a subsequent protest with our Office until it eventually receives a final decision on the merits from the contracting agency. Rather, a protester may wait only a reasonable time for a contracting agency's response before filing a protest here, in order to be timely. Experimental Pathology Laboratories, Inc., B-211282, July 28, 1983, 83-2 C.P.D. ¶ 136. Despite the fact that REACT knew on April 23 that awards had been made to Burroughs, and that Burroughs therefore presumably was performing, REACT took no further action for almost 3 months after filing its initial protest with the Navy. Only then, after this lengthy delay, did REACT (on July 11) inquire as to the status of the protest, and the firm then still waited 3 more weeks to submit an FOIA request and file a protest with our Office. Under the circumstances, we find that REACT has failed to diligently pursue its complaint against the awards. See XTEK Corp., B-207170, May 10, 1982, 82-1 C.P.D. ¶ 448.

REACT's protest is dismissed as untimely filed.



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